

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN LEE TETREAU,

Petitioner,

v.

CASE NO. 2:12-cv-10013
HONORABLE DENISE PAGE HOOD

WILLIE SMITH,

Respondent.

**ORDER GRANTING PETITIONER'S
MOTION FOR RECONSIDERATION
AND DIRECTING RESPONDENT TO FILE THE
REQUESTED MATERIAL IN THE TRADITIONAL MANNER**

On January 3, 2012, petitioner Kevin Tetreau filed a *pro se* habeas corpus petition, challenging his state conviction for felonious assault, Mich. Comp. Laws § 750.82. Petitioner's conviction arose from an altercation at a bowling alley in Colfax Township in 2008. A digital video disc (DVD) depicting the incident was played for the jury at Petitioner's trial. Petitioner alleges in his amended habeas corpus petition that the trial court (1) violated his right to counsel by forcing him to represent himself at trial and (2) abused its discretion by refusing to instruct the jury on the use of nondeadly force in self defense after instructing the jury on the use of deadly force in self defense.

On May 18, 2012, Respondent filed an answer to the petition and the state court record. Petitioner subsequently moved to compel Respondent to file the surveillance DVD or frame-by-frame photocopies of same. On September 25, 2012, the Court denied Petitioner's motion because the motion did not explain what was depicted in the requested

materials, nor how the materials were relevant to the habeas claims. It further appeared to the Court that the state court record submitted by Respondent was adequate to assist the Court in adjudicating Petitioner's habeas claims.¹

Currently pending before the Court is Petitioner's motion for reconsideration of the Court's order denying his motion to compel Respondent to file the DVD or photocopies. Petitioner alleges that the DVD is necessary to show that the Michigan Court of Appeals incorrectly determined the facts of his case when adjudicating his claim about the jury instructions.

The DVD was admitted in evidence at Petitioner's trial and played several times for the jury. The Court now believes that the DVD may prove helpful when assessing Petitioner's claim about the jury instructions on the use of force in self defense. Accordingly, Petitioner's motion for reconsideration [document number 14, filed on Oct. 4, 2012] is **GRANTED**. Respondent shall file the DVD or the frame-by-frame photocopies within **twenty-eight (28) days** of the date of this order. If Respondent chooses to file the DVD, he shall file the DVD in the traditional manner pursuant to Rule 18 of the Court's Electronic Filing Policies and Procedures (E.D. Mich. Mar. 2010).

S/Denise Page Hood

Denise Page Hood
United States District Judge

Dated: January 17, 2013

¹ Respondent contends that Petitioner's claims are not cognizable on habeas review, are procedurally defaulted, or lack merit.

12-cv-10013
January 17, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 17, 2013, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager